IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR.

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:: **JUDGMENT** ::

Sant Kumar Vs. Himmat Lal & Ors.

S.B. CIVIL MISC. APPEAL NO.87/1995.

Against the award dated 02.11.1994 made by the Motor Accidents Claims Tribunal, Udaipur in Claim Case No.9/1992.

Date of Judgment :: 17th May 2007

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. S.K. Sankhla, for the appellant.
Mr. R.K. Mehta, for the respondent No.3.

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BY THE COURT:

This is claimant's appeal against the award dated 02.11.1994 made by the Motor Accidents Claims Tribunal, Udaipur in Claim Case No.9/1992 seeking enhancement over the amount of Rs.30,000/- together with interest @ 12% per annum from the date of filing of claim application awarded by the Tribunal towards compensation for the loss suffered by him due to the injuries sustained in a vehicular accident.

Backgrounds facts are that on 22.07.1991 at about 12:45 p.m., the claimant, then about 23 years of age and serving as

Sepoy in Army Medical Corps, while riding his Priya scooter in the City of Udaipur going from Surajpol towards Gayariyawas, was hit by an oncoming jeep bearing registration No. GJ06 A 1985. Because of the accident, the claimant-appellant sustained several injuries including fracture of lower end of left radius bone and fracture of left tibia and fibula bones. The claimant sought compensation against the driver, owner and insurer of the aforesaid jeep alleging that the accident occurred for rash and negligent driving of the vehicle by the non-applicant No.1. Stating his age at 23 years and monthly income from salary and allowances at Rs.2,500/-, the claimant submitted for quantification of compensation that his scooter was badly damaged and he had incurred Rs.5,500/- on its repairs; that he remained hospitalised in Civil Hospital at Udaipur where he incurred expenditure of Rs.5,300/- and then remained under treatment with Army Hospital at Jodhpur for about two months; that though fractured bone of his left arm united but he was unable to do any work from this hand and was entitled to recover Rs.30,000/- for such disablement; that fractured bones of his left leg have not united properly and he was still under plaster-cast and suffering continuous physical pain and was entitled to recover Rs.60,000/- on that count; that he would be required to undergo further operation and shall incur Rs.30,000/- on that count; that he remained absent from his

duty for six months and was entitled to recover Rs.10,000/- for such loss; that according to the higher officers, he was likely to be relieved from services; that he was educated upto 5th Standard only and for physical disablement he would not be able to do any work in future; that had he continued in his service in the Army, he would have got promotions and substantial increments and was, therefore, entitled to recover compensation for the loss estimated at Rs.10,000/- per annum for 30 years at Rs.3,00,000/-. The claim for compensation was put to contest by the insurer of the aforesaid jeep with the submissions that the claimant has not suffered any disablement and that the incident occurred for the fault and mistake on the part of the claimant only. The non-applicant insurer raised various other contentions for its exoneration.

After framing of necessary issues by the Tribunal, in oral evidence, the claimant examined himself and produced documentary evidence in the form of his discharge certificate as Ex.1 and his pay certificate as Ex.12; photostat of his hospital admission card for the period 10.03.1994 to 11.03.1994 as Ex.2, his discharge and follow-up ticket of Medical College and Associate Group of Hospitals for the period 10.04.1993 to 13.04.1993 as Ex.3; and certified copies of charge-sheet, first information report, site inspection memo, injury report, X-ray report, notice under Section 133 of the Motor Vehicles Act and

reply thereto by the owner, registration certificate of the jeep, and insurance certificate as Exhibits 4 to Ex.11 respectively. The non-applicants did not adduce any evidence.

After hearing the parties, the learned Judge of the Tribunal proceeded to hold in issue No.1 with reference to the statement of the claimant and the evidence produced by him that the accident occurred for rash and negligent driving by the jeep driver. On quantification of compensation, the learned Judge referred to the statement of the claimant to the effect that he has incurred Rs.5,500/- for repairs of his scooter and has spent Rs.10,000/- and another Rs.15,000/- on treatment and that he had been removed from services from 17.04.1994. The learned Judge also referred to the statement of the claimant in his cross-examination that he did not receive any promotion in six years of service and that all his expenses in Military Hospital were borne by his employer. The Tribunal referred to the injury report Ex.7 showing four injures and read from the X-ray report Ex.8 about fracture of tibia and fibula bones and noted that the claimant has not produced any bill of treatment expenditure nor any certificate in relation to his leave account. The learned Judge also referred to the pay certificate Ex.12 showing salary income of the claimant at Rs.1,509/- per month and then to the discharge certificate of Udaipur Hospital Ex.3 and of the Military Hospital, Jodhpur Ex.2. The learned Judge also referred to the

certificate Ex.1 showing discharge of the claimant from service and observed that the claimant admitted in cross-examination that normal retirement age in such services was 32 years. The learned Judge observed that it was not positively established on record that the claimant was removed from service because of the injuries sustained in the accident nor any permanent disablement certificate was filed nor it could be deduced that the claimant was incapacitated to do any work; and various establishments have made provisions for appointing retired defence personnel as Security Officers on priority basis. After this much of discussion, the learned Judge abruptly picked up a figure of Rs.30,000/- to be awarded as lump sum compensation to the claimant towards future likely expenditure on treatment, diets, transportation, physical and mental suffering and likely effect on earning capacity with the following observations:-

> "..... विवरण अभिप्राय यह है कि इस दुर्घटना के फलस्वरूप आई चोटों की वजह से प्रार्थी को सेवामुक्त कर दिया हो यह तथ्य पूर्णरूपेण सिद्ध नहीं कराया गया साथ ही स्थायी अक्षमता आने का कोई प्रमाणपत्र पेश नहीं हुआ है वर्तमान में प्रार्थी अन्य कार्य करने में सक्षम न हो ऐसा निष्कर्ष निकाला नहीं जा सकता आर्मी से सेवा निवृत्त सैनिकों व अधिकारियों को विभिन्न प्रतिष्ठान में सुरक्षा अधिकारी आदि पदों पर प्राथमिकता आधार पर नियुक्ति देने के प्रावधान है ।
>
> प्रार्थी के मौखिक कथन और प्रलेखीय साक्ष्यों के आधार पर कारित चोटों की गंभीरता

को विचारते हुवे संभावित उपचार में हो सकने वाले खर्चे, आहार, यातायात खर्चा, शारिरिक मानसिक कष्ट व आय पर संभावित प्रभाव को ध्यान में रखते हुवे एक मुश्त राशि 30,000/- दिलाया जाना न्यायोचित पाता हूं ।"

While making the award in the aforesaid sum of Rs.30,000/-, the Tribunal allowed interest @ 12% per annum from the date of filing of claim application and fastened liability for payment upon the insurer.

The award aforesaid has been questioned in this appeal as being too low and grossly inadequate particularly with the submissions that the Tribunal has erred in awarding a meagre amount of Rs.30,000/- towards compensation and in failing to consider that claimant was discharged from service only as a result of disablement carried by him due to after-effects of the injuries sustained in the accident. Learned counsel appearing for the claimant-appellant referred to the photostat of medical case sheet dated 10.03.1994 said to be annexed to the hospital admission card Ex.2 and submitted that from the said summary, it is apparent that the claimant has suffered shortening of leg by 2 centimeters and restriction of ankle and knee movement and because of such physical conditions, he was lowered down in medical category and was not found fit to be retained in Army and for this reason alone, was discharged from service with effect from 17.04.1994 as stated in the discharge certificate

Ex.1. Learned counsel submitted that in view of such documentary evidence available on record, the Tribunal ought to have awarded reasonable compensation to the claimant for the pecuniary loss suffered by him due to removal from service. Learned counsel further submitted that the Tribunal has not even examined the record of the case and has merely referred to the fracture of tibia and fibula bones from the X-ray report Ex.8 and has totally ignored the fracture of lower end of radius bone as stated in the very same report Ex.8 and, therefore, the amount of compensation in all in the sum of Rs.30,000/- remains much on the lower side and deserves enhancement. The award impugned has been supported on the other hand on behalf of the non-applicant insurer as being reasonable and sufficient looking to the period of treatment and nature of injuries. Learned counsel for the insurer strenuously contended that the claim for compensation as made by the appellant with reference to his alleged discharge from service is not substantiated by cogent evidence on record because the certificate Ex.1 does not state such injuries or any disablement being the reason of his discharge; and then, no such disablement certificate is available on record wherefrom it could be deduced that the claimant had suffered any loss of earning capacity.

Having heard learned counsel for the parties and having examined the record in its totality, this Court is of opinion that the claimant has failed to prove by cogent evidence that the disablement relating to and arising out of the injuries sustained in the accident was the direct and only cause of his discharge from Army Medical Corps and, therefore, the claim made by him towards loss of income due to discharge from service may not be accepted as such, yet in the overall facts and circumstances of the case, the award as made by the Tribunal in a lump sum of Rs.30,000/- remains too low and insufficient and deserves suitable modification by upward revision.

Having examined the record in its totality, this Court is constrained to observe that the manner of making of the award in this case by the Tribunal in a lump sum of Rs.30,000/- cannot be appreciated. Award of compensation in a vehicular accident claim case is required to be made on certain principles and some rationale. May be, in a given case in the overall fact situation of the case and the material placed or omitted to be placed on record, awarding of a lump sum towards compensation could be resorted to; but the proposition of awarding of lump sum cannot be adopted as a shortcut for every claim case. The Tribunal in this case has referred to some part of the oral and documentary evidence on record and then has abruptly picked up a figure of Rs.30,000/- to be

awarded as compensation towards likely expenditure on treatment, diets and transportation; for physical and mental pain; and so also for likely adverse effects on income. Taking an overall picture into account, the award is definitely on the lower side.

It is, of course, true that the record of the present claim case is lacking in material particulars and cogent evidence requisite for the purpose of arriving at a definite conclusion that the claimant was discharged from service only due to his adverse medical category and disablement. Suggestion by the learned counsel for the claimant to read the photostat of the medical case sheet dated 10.03.1994 for the purpose of arriving at the conclusion that there had been permanent disablement that led to discharge from service, cannot be accepted because what the claimant has exhibited in evidence as Ex.2 is the photostat of hospital admission card available at page C9/17 of the record; and it is difficult to read the photostat available at page C9/19 of the record, stated to be the medical case sheet of Military Hospital, as a part of the document Ex.2. Moreover, even if the said photostat at page C9/19 be read as it is, the fact remains that the discharge certificate Ex.1 does not at all make a mention that the claimant Sant Kumar has been discharged from service due to the injuries or disablement. It is also noticed that the accident in question occurred as back as

on 22.07.1991 and the claimant had continued in service till 17.04.1994. The claimant has failed to explain relevant and essential particulars of his service conditions during the period from the date of accident till the date of discharge from service.

It is also noticed that the hospital discharge and follow-up ticket Ex.3 produced by the claimant is not related to the injuries sustained in the accident but is in relation to his operation for appendicitis on 11.04.1993 in Surgical Unit 'A' of Medical College and Associate Groups of Hospital, Udaipur. It is obvious that the claimant has unnecessarily placed the said document merely creating confusion in this claim case; and at the same time, has not produced relevant documents in corroboration and support of essential facts relating to his discharge from service.

Therefore, on an overall comprehension of the record of the case, the finding of the Tribunal that the claimant has failed to establish that he was removed from service due to the injuries sustained in the accident cannot be faulted with; and for want of any definite medical opinion, it cannot be deduced that there had been total loss of earning capacity as suggested by the claimant in his statements.

However, even when the case of the claimant for compensation due to discharge from service is not accepted as such, it cannot be gainsaid that he did suffer substantial injuries

in the accident in question at the age of about 23 years; and the injuries included fracture of lower end of radius bone and so also of tibia and fibula bones. The claimant had also suffered two more injuries on left thigh and right knee. It appears that the claimant was treated at the Military Hospital, Jodhpur in relation to his injuries and the documents on record are indicative at least of the position that the claimant had continued with some after-effects of the injuries. It cannot be denied that the claimant had been discharged from his Military service with effect from 17.04.1994 at a young age of about 26 years. In the overall facts and circumstances of the case, this Court is of the view that for the claimant carrying after-effects of the injuries on his arm and leg, some retardation in his earning capacity cannot be ignored. The claimant further deserves to be compensated properly for pain and suffering related to the grievous and simple injuries; and for other losses including that on attendants, diets, transportation etc.

On the facts and in the circumstances of the case, this Court is of opinion that even when the claimant is considered capable of earning Rs.1,500/- per month with reference to his pay certificate Ex.12 and with reference to minimum wages at the relevant time, and even when his loss of earning capacity is taken only at about 15%, an amount of Rs.2,700/- per annum towards loss of his income could be considered and, even

when capitalised with lower side multiplier of 15, his pecuniary loss stands at Rs.40,500/- The claimant deserves to be allowed another Rs.10,000/- towards pain and suffering related with two simple and two grievous injuries; and it appears appropriate to allow yet another Rs.9,500/- to the claimant towards expenditure including that on diets, transportation, attendants etc. Thus, even if no other amount towards non-pecuniary loss is allowed, the claimant is still entitled for compensation minimum in the sum of Rs.60,000/- (40,500/- +10,000/- + 9,500/-) as against the award of compensation made by the Tribunal in the sum of Rs.30,000/-. Therefore, the award of compensation in favour of the claimant deserves to be enhanced by a sum of Rs.30,000/-.

The Tribunal has allowed interest @ 12% per annum; but in view of the enhancement being allowed herein and looking to the period of litigation, it appears appropriate to allow interest @ 7.5% per annum on the enhanced amount from the date of filing of claim application.

In the result, the appeal filed by the claimant succeeds and is partly allowed; the impugned award made by the Tribunal is modified and in place of the amount of Rs.30,000/-, the claimant-appellant is awarded compensation in the sum of Rs.60,000/-. The claimant shall, therefore, be entitled for a further amount of Rs.30,000/- over and above the amount

awarded by the Tribunal and shall be entitled for interest @ 7.5% per annum on this enhanced amount from the date of filing of claim application. The respondent insurer shall deposit the remaining amount now payable within 30 days with the Tribunal that shall issue necessary and appropriate orders for disbursement. In the circumstances of the case, the parties are left to bear their own costs.

(DINESH MAHESHWARI), J.

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